

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVE HESSE and ADAM BUXBAUM, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

GODIVA CHOCOLATIER, INC., and DOES 1
through 50,

Defendants.

No. 1:19-cv-00972-LAP

**DECLARATION OF RICHARD DUBOIS
EXECUTIVE DIRECTOR
NATIONAL CONSUMER LAW CENTER**

I, Richard Dubois, declare as follows:

1. I have personal knowledge of the facts in this Declaration and, if called as a witness, I could and would competently testify to these facts.
2. I am Executive Director of the National Consumer Law Center (“NCLC”). As Executive Director of NCLC, I am responsible for priority setting, project assignments, and quality of work at the organization, and direct all research, policy, and advocacy projects, as well as Center policymaking, hiring, fundraising, and budgetary planning. I have been with NCLC since 1997, having previously served as Deputy Director, as Director of Development and Project Planning, and as an attorney focusing on foreclosure prevention and sustainable

homeownership issues. I have also been a co-author or contributing author of a number of NCLC publications, including NCLC's treatise Consumer Warranty Law.

3. NCLC is a 501(c)(3) nonprofit organization dedicated to consumer protection and the promotion of fairness and justice in the marketplace. NCLC was founded in 1969 with funding from the federal Office of Economic Opportunity as a national support center for legal services organizations. Today, NCLC is a fully independent organization governed by a volunteer national board of directors, including attorneys and clients from low-income communities, which continues to prioritize providing training, support and case assistance to legal aid and pro bono attorneys representing low-income clients.

4. For more than five decades, NCLC has been a leading source of legal and public policy expertise on consumer issues for lawyers, federal and state policymakers, consumer advocates, journalists, and front-line providers of community services. With a goal of protecting consumers from, and redressing injuries caused by inaccurate, false and misleading statements or omissions by businesses, NCLC has trained and advised tens of thousands of advocates on consumer legal issues, appeared in cases throughout the nation, worked with state and federal commissions and legislatures, written investigative reports, and published leading legal practice manuals and consumer guides. Specific examples of the ways in which NCLC's consumer law expertise is used to support consumer attorneys and directly benefit consumers include the following:

5. Conferences and Trainings: Every year, NCLC trains thousands of attorneys and other advocates through workshops, conference presentations, and webinars. These 2-4 day, in depth trainings benefit consumers nationally by ensuring that practitioners and advocates understand the current state of consumer law and accurately apply existing legal frameworks.

NCLC hosts three annual conferences, including the nation's largest annual consumer law conference, the Consumer Rights Litigation Conference (CRLC). Sessions are led by the nation's most successful consumer litigators where questions are asked and answered, ideas on best practice are shared, and powerful consumer law remedies and attorney fee recovery methods are learned. Built within the CRLC, following the main conference, is the Class Action Symposium where attorneys learn about cutting-edge issues that confront class action practitioners. The Symposium attracts 125-150 practitioners each year. Featured presenters at the Consumer Class Action Symposium recently have included Deans Robert Klonoff and Erwin Chemerinsky; Judges Richard Posner and William Young; State Attorney Generals Skip Humphrey and John Kroger; Professors Richard Daynard, Linda Mullinix, Rick Marcus, Brian Fitzpatrick, and Victoria Sahani;

6. Legal Treatises and Consumer Law Publications: NCLC publishes a comprehensive 21-volume set of legal treatises, widely cited in judicial opinions by courts, including the United States Supreme Court. The American Bar Journal review of NCLC's treatises described the series as "a monumental undertaking comparable to but more practical than the Restatement of Laws." NCLC also produces books and other educational materials intended for consumers themselves, and for our large network of lay advocates and service providers. Written in clear and direct language, and updated regularly in its digital format, these materials give practical advice on consumer rights and their protection.

7. Specifically, the Unfair and Deceptive Acts and Practices treatise provides solid understanding on how an unfair and deceptive acts and practices (UDAP) statute usually provides attorney fees and enhanced damages for a wide array of deceptive or abusive practices such as for this case, false advertising. For over 30 years, NCLC's UDAP manual has been the

definitive treatise in this area for use in all 50 states. It addresses issues related to: consumer refunds and cancellation rights, automatic renewal provisions, unfair, illegal and unenforceable consumer contract terms, insurance products sales or claims practices; predatory lending, loan brokers, and mortgage abuse; credit card abuses; application to national banks; automobile sales, financing, leasing; manufactured homes and parks; service contracts and auto repair; landlord-tenant, insurance, utilities; failure to disclose; unfairness standards; liability of third parties for UDAP violations; scope of each state's UDAP statute; and preconditions to litigation under each state's UDAP statute.

8. NCLC also publishes the Consumer Class Actions manual, a practical litigation guide and how-to manual for handling a class action, even for small law offices, written by experienced consumer class action litigators. It covers case selection and class definitions; forum selection; class certification; class notice; and claims administration and distribution of benefits, among many other topics. It is a comprehensive and highly praised resource designed to give step-by-step advice on every major aspect of handling a consumer class case.

9. Legal and Policy Analysis: NCLC's legal and policy experts analyze regulatory proposals; provide expert witness services; and research and write extensive Reports, Policy Briefs, and formal regulatory comments on a wide range of consumer law matters, including on (but not limited to) issues associated with the Truth in Lending Act (TILA), the Fair Credit Reporting Act (FCRA), the Equal Credit Opportunity Act (ECOA), the Fair Debt Collection Practices Act (FDCPA), the Telephone Consumer Protection Act (TCPA), the Fair and Accurate Credit Transactions Act (FACTA), the Military Lending Act (MLA), and more.

10. Public Education: NCLC also responds to requests from journalists for information and disseminates our research on important consumer issues. We are consulted for

background information and quoted regularly by The New York Times, The Wall Street Journal, USA Today, The Los Angeles Times, The Washington Post, National Public Radio, and other major news organizations. We work with the media to alert consumers to potentially misleading business practices, and to provide tips on practical steps that the public can take to obtain relief from (or not be harmed by) improper business conduct.

11. NCLC approves of the approach adopted by the American Law Institute in § 3.07 of its Principles of the Law of Aggregate Litigation regarding the criteria a court should apply to determining whether a proposed cy pres distribution is appropriate. NCLC also adheres to, and supports, Guideline 7, Cy Pres Awards, of the National Association of Consumer Advocates Standards and Guidelines for Litigating and Settling Consumer Class Actions (3rd Ed. 2014). The procedures set forth in these rules have been endorsed by federal courts as the best way to insure that (1) there is a maximum distribution to class members; (2) the designation of the remaining funds will be allocated for uses that are most likely to further the interests of absent class members; and (3) the selection process is not tainted by self-interest.

12. NCLC has long been considered by courts to be a worthy recipient of cy pres awards. Since 1997, NCLC has been approved by courts to receive over 500 cy pres and class action settlement awards, all of which have been used to promote consumer protections and equal access to justice for consumers in need of effective legal representation. NCLC is a national organization and is therefore well tailored for cases that involve national harm. In support of this belief, in a final court order filed February 22, 2016 in *Brandewie v. Wal-Mart*, Case No. 1:14-cv-965 (N.D. Ohio) it was noted that the court “carefully scrutinized the proposed list of recipients and rejected all proposed recipients but one” – NCLC. The judge wrote in a

court order filed December 16, 2015 (Doc. 82 in same case) awarding NCLC residual funds from the case “will further the interest of absent Class Settlement Members”.

13. Because of our expertise in UDAP issues, over the years NCLC has been the recipient of cy pres awards that directly relate to false advertising cases, including but not limited to: Miller v. Ghirardelli Chocolate Company, 3:12-cv-04936-LB (N.D.Cal. 2012); Custom Led, LLC v. eBay, Inc, No. 12-CV-00350-JST, 2013 WL 4552789 (N.D. Cal. Aug. 27, 2013); Spann v. J.C. Penney Corp., 211 F. Supp. 3d 1244 (C.D. Cal. 2016); and Johnson v. Gen. Mills, Inc., No. SACV 10-00061-CJC, 2013 WL 3213832 (C.D. Cal. June 17, 2013).

14. Any funds received from this case would be used only to further protect, promote and bolster consumer rights and to ameliorate false advertising, through conferences, trainings, and educational opportunities, as well as keeping the publications dealing with UDAP and false advertising up to date and relevant for use across the 50 states.

15. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 31st day of March 2022, at Boston, Mass..



Richard Dubois